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Before the
Federal Communications Commission
Washington, D.C. 20554

OCT 19 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's Rules)
Regarding Multiple Address Systems)

WT Docket No. 97-81

To: The Commission

REPLY COMMENTS OF ADAPTIVE BROADBAND CORPORATION

On behalf of Adaptive Broadband Corporation, formerly Microwave Data Systems, Inc., Keller and Heckman LLP files these reply comments in response to the Further Notice of Proposed Rule Making and Order ("Further Notice"), released by the Commission on July 1, 1999.

Background

Adaptive Broadband is a leading manufacturer and vendor of MAS equipment to the nation's public safety and critical infrastructure companies. Adaptive Broadband has been an active participant in this proceeding for many years. In its Comments in response to the Further Notice, Adaptive Broadband argued that the Commission is misreading the Balanced Budget Act of 1997 and has analyzed the MAS bands using a standard that is found nowhere in that Act.

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“Current Dominant Use” Is Not a Valid Analysis

Congress has given the Commission instructions to exempt from auctions applications filed by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, state and local governments, emergency road services and other entities who can show that their internal communications protect the safety of life, health or property and are not offered to the public on a commercial basis. These exemptions relate to the nature of the use and the user, not to the Commission’s artificial classification of the nature of any particular frequency band.

The Commission’s efforts to examine and characterize the various MAS bands according to the “current dominant use” has no basis in the Balanced Budget Act. Consequently, the Commission’s proposals and tentative conclusions which flow from this analysis have no validity. Congress directed the Commission to examine the *applicants for initial licenses*, not previously granted licenses. If these applicants are public safety applicants (as broadly defined in the Balanced Budget Act¹) and seek initial licenses for their internal communications, they are exempt from auctions.

Although the Commission has yet again cited those 50,000 bogus applications that were once filed for MAS licenses to support its conclusion that the 932/941 MHz band does not fall

¹Here and throughout these comments, when we refer to public safety applicants, we mean the expanded definition of public safety as used on the Balanced Budget Act, and not merely the traditional public safety eligibles, such as police and fire departments.

within the auction exemption, it is significant that none of those applicants came forward in comments to support the Commission's tentative conclusions and proposals.

The absurdity of the Commission's analysis is that it filters out and denies vacant MAS channels to the very public safety applicants who have been waiting 15 years for spectrum relief and for whom Congress sought to provide relief in the Balanced Budget Act.

Practical Licensing Issues

Adaptive Broadband has argued that the licensing process and service rules for the MAS bands are already in place. These rules can govern site-licensed stations in the 932/941 MHz band as well. Adaptive Broadband suggested the creation of two pools of frequencies in the band:

- A pool of 25 MAS channels in the 932/941 MHz band for application by public safety entities, i.e., utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, state and local governments, emergency road services and other companies that certify that these channels will be used for internal communications to protect the safety of life, health or property without being offered to the public on a commercial basis. Licensing to be on a site-by-site basis.
- A pool of 15 MAS channels in the 932/941 MHz band for licensing by auction to commercial users and licensing to federal agencies. Licensing to be on a territory basis.

Although the percentage splits differ somewhat, other commenters, particularly the Critical Infrastructure Industries, have also urged the Commission to initially set aside a pool of channels for public safety applicants. This is indeed the only practical way in which the auction exemption can be implemented for public safety entities. This approach, which does, in fact,

focus on the nature of the initial applicants, can derive its validity from the Balanced Budget Act, far more than can the Commission's "current dominant use" approach.

Resolution of Mutual Exclusivity

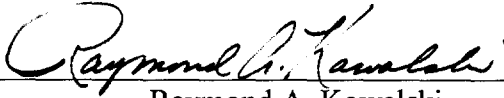
Adaptive Broadband has suggested in the case of mutually exclusive applications that all applications be granted if they are otherwise in order and that the applicants be required to share the channels under whatever arrangement they can privately negotiate. There is precedent for this approach. See, for example, the Order and Authorization in the Matter of the Application of Volunteers in Technical Assistance, 11 FCC Rcd 1358 (1995); Third Report and Order in the Matter of Regulatory Treatment of Mobile Services, General Docket 93-252, PR Docket 93-144, PR Docket 89-553, 9 FCC Rcd 7988 (1994); and Application of Orbital Communications Corporation, 9 FCC Rcd 647 (1994).

Conclusion

The Commission's tentative conclusions and proposals have attracted virtually no support. On the contrary, the broader community of public safety applicants has implored the Commission to abandon its efforts to feed its auction machine and to instead make MAS channels available, without auctions, to such applicants. It is now incumbent upon the Commission to heed these pleas and act accordingly.

Respectfully submitted,

ADAPTIVE BROADBAND CORPORATION

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